

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WAUSAU UNDERWRITERS INSURANCE
COMPANY and AXIS SPECIALTY INSURANCE
COMPANY,

Civil Action No.
06 CV 3212 (VM)(THK)

Plaintiffs,

-against-

QBE INSURANCE CORPORATION and
SCOTTSDALE INSURANCE COMPANY,

Defendants.
-----X

**PLAINTIFFS' RESPONSE TO
QBE'S STATEMENT OF
ADDITIONAL FACTS
PURSUANT TO LOCAL CIVIL
RULE 56.1**

Plaintiffs WAUSAU UNDERWRITERS INSURANCE COMPANY and AXIS SPECIALTY INSURANCE COMPANY, by their counsel, JAFFE & ASHER LLP, hereby respond, pursuant to Rule 56.1(b) of the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York, to additional paragraphs 42 through 72 of Defendant's Local Civil Rule § 56.1 Statement submitted on behalf of defendant QBE INSURANCE CORPORATION ("QBE"), as follows:

42. Deny. (Affidavit of William H. Bave, Jr., sworn to on November 9, 2006, Exhibit "G".)

43. Admit for purposes of this motion.

44. Admit for purposes of this motion.

45. Admit for purposes of this motion.

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49. Admit for purposes of this motion.

50. Admit for purposes of this motion.

51. Admit for purposes of this motion.

52. Deny. (Michael Morrissiey's Affidavit in Support of Motion for Partial Summary Judgment, sworn to on October 16, 2006, Exhibit "1"; Marshall T. Potashner's Reply and Opposition Affidavit, sworn to on December 1, 2006, Exhibits "6", "7", & "8"; Affidavit of Paul Kovner, Esq., sworn to on November 15, 2006, Exhibits "2" & "3".)

53. Admit for purposes of this motion.

54. Admit for purposes of this motion.

55. Deny. (Michael Morrissiey's Affidavit in Support of Motion for Partial Summary Judgment, sworn to on October 16, 2006, Exhibit "1"; Marshall T. Potashner's Reply and Opposition Affidavit, sworn to on December 1, 2006, Exhibits "6", "7", & "8"; Affidavit of Paul Kovner, Esq., sworn to on November 15, 2006, Exhibits "2" & "3".)

56. Admit for purposes of this motion.

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62. Admit for purposes of this motion.

63. Admit for purposes of this motion.

64. Deny. (Michael Morrissiey's Affidavit in Support of Motion for Partial Summary Judgment, sworn to on October 16, 2006, ¶ 20.)

65. Deny. (Affidavit of William H. Bave, Jr., sworn to on November 9, 2006, Exhibit "J".)

66. Deny. (Michael Morrissiey's Affidavit in Support of Motion for Partial Summary Judgment, sworn to on October 16, 2006, ¶¶ 19-27; Reply and Opposition Affidavit of Michael Morrissiey, sworn to on November 30, 2006, ¶¶ 3-21 & Exhibit "4"; Marshall T. Potashner's Reply and Opposition Affidavit, sworn to on December 1, 2006, Exhibit "5".)

67. Deny. (Michael Morrissiey's Affidavit in Support of Motion for Partial Summary Judgment, sworn to on October 16, 2006, Exhibit "1"; Marshall T. Potashner's Reply and Opposition Affidavit, sworn to on December 1, 2006, Exhibits "6", "7", & "8"; Affidavit of Paul Kovner, Esq., sworn to on November 15, 2006, Exhibits "2" & "3".)

68. Deny. (Michael Morrissiey's Affidavit in Support of Motion for Partial Summary Judgment, sworn to on October 16, 2006, Exhibit "1"; Marshall T. Potashner's Reply and Opposition Affidavit, sworn to on December 1, 2006, Exhibits "6", "7", & "8"; Affidavit of Paul Kovner, Esq., sworn to on November 15, 2006, Exhibits "2" & "3".)

69. Admit for purposes of this motion.

70. Admit for purposes of this motion.

71. Deny. (Michael Morrissiey's Affidavit in Support of Motion for Partial Summary Judgment, sworn to on October 16, 2006, ¶ 4.)

72. Admit for purposes of this motion.

Dated: New York, New York
December 1, 2006

Respectfully submitted,

JAFFE & ASHER LLP

By: 

Marshall T. Potashner (MTP-3552)

mpotashner@jaffeandasher.com

Attorneys for Plaintiff

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COMPANY

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